IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6792 OF 2002

Yasin Gulam Haiderkhan .. Petitioner

Versus

Prabhakar Ganpat Wadekar & Ors. .. Respondents

Ms.Rupali Deo with V.G.Mujumdar for petitioner

Mr.S.B.Deshmukh i/b. A.V.Anturkar for respondent Nos. 1 and 2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : DECEMBER 16, 2004.

P.C.

. Regular Darkhast No.262 of 1988 has been instituted by petitioner - decree holder for execution of decree passed in his favour for

possession of immovable property. On earlier occasion when objection was taken to the issuance of warrant of possession, the matter reached this Court at the instance of judgement debtor. This Court speaking through brother, F.I. Rebello, J. on 4th April 2001 in C.R.A. 709 of 2001 has observed as under:-

> " ..In spite of decree becoming final there are further attempts to obstruct the execution of the decree. The executing court has noted that the first appellate court had devoted considerable ime, discussed the very issue in controversy viz., as to what was the suit property. The court then noted that the property which was suit property was six khans and that was the property of plaintiff Zarinabi the decree holder.
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> . The contention on behalf of the

judgement debtor obstructionist is that there is no such property and that there is only one room once the finding of appellate court is not set aside by any superior court, the suit property will have to be identified as six khans as set out in the order of executing court.

. In that light of the matter, decree of execution to the extent of six khans cannot be interfered with. If there are any mistakes i.e. the typographical mistakes, the executing court can correct such mistakes for the purpose of giving effect to the decree passed earlier.

. With the above observations, CRA stands disposed of. No order as to costs."

2. It appears that in pursuance of the order passed by this Court, petitioner decree holder prayed for execution of possession warrant and if necessary with police help. This application was made on 10th April 2001. On this application, the judgement debtor beyond pointing out that the matter is being taken by him to this Court, stated nothing. The objections of judgement debtor were rejected by the executing court on 12th April 2001. Thereafter, the decree holder applied for issuing possession warrant by an application made on 23rd April 2001, which was supported by an affidavit. The said application has been rejected by a cryptic order which is reproduced hereinbelow:-

> " Perused application and say. D.H. to specify properties with boundaries. In absence of specific mention of boundaries, application rejected."

3. Petitioners are making a serious grievance before me that despite the objections with regard to description of immovable property being rejected on as many as three occasions and the orders in that behalf having upheld by this Court, executing court is refusing to execute the decree.

4. The grievance made by Mr.Muzumdar is that the properties have been described with sufficient details and in any event, application has been made by the decree holder for correction of the typographical error pursuant to liberty by this Court. It could have always been considered and granted and, therefore, there was no reason for the learned Judge to have refused warrant of possession on the ground that the application made in that behalf does not specifically mention the boundaries. Reliance is placed by him on a decision of Andhra Pradesh High Court in the case

of Y.Subba Rao and Ors. Vs. Amizunnisa Begum and Ors., reported in A.I.R. 1984 NOC 300 (Andh.Pra.).

5. Learned Counsel appearing for judgement debtor supported the order passed by the executing court by submitting that pursuant to the liberty granted by this court, the decree holder ought to have first corrected the description of the immovable property and then applied for issuance of possession warrant and therefore this is not a fit case for interference by this Court under Article 227 of the Constitution.

6. In my view, considering the fact that regular darkhast No.262 of 1988 is still pending and a decree for possession of immovable property passed in favour of petitioner in a suit instituted by their predecessor in title is yet to be executed, the application made for issuance

of possession warrant could not have been refused merely because the property has not been described with precision. The executing court has taken a hyper technical approach by insisting upon the boundaries being described when the decree speaks for itself. The executing court had all material before it including plan and the sketch of the immovable property in question. If there was any error, it was the plain duty of the executing court to have directed petitioner to carry out such corrections as are permissible in law and then to proceed with the execution of decree.

7. In the light of the observations made by this Court which are reproduced above and considering the fact that the matter has been delayed for more than 17 years, this is a fit case where the executing court shall permit petitioner to correct typographical error, if any, in the decree and proceed to execute the

same in accordance with law.

8. With the aforesaid directions writ petition is disposed of. Regular Darkhast No.262 of 1988 to be decided as expeditiously as possible and in any event within a period of three months from today.

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